

Salaried Judge First-tier Tribunal, Social Entitlement Chamber (Social Security and Child Support)

29 March 2011

Purpose

The purpose of this report is to provide general feedback on candidate performance on the qualifying test for the selection exercise. The first part of this report describes how the Judicial Appointments Commission (JAC) developed a test and marking schedule on how the test was structured.

The second part provides information on the overall performance of the candidates in the test, identifying errors where they performed well and where they performed poorly.

Qualities and Abilities

The test was set to assess elements of:

1. Intellectual Capacity
 - Expertise in your chosen area or profession
 - Ability to quickly absorb and analyse information
 - Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge when necessary
2. Personal Qualities
 - Integrity and independence of mind
 - Sound Judgement
 - Decisiveness
 - Objectivity
4. Authority and Communication Skills
 - Ability to explain the procedure and any decisions reached clearly and succinctly to all those involved.
5. Efficiency
 - Ability to work at speed and under pressure
 - Ability to organise time effectively and produce clear reasoned judgements expeditiously

Development of the Test

The test and the marking schedule were designed by two District Tribunal Judges, both of whom had extensive experience within this jurisdiction. One had previous experience in designing and marking qualifying tests for the JAC, both had experience in interviewing candidates for the JAC. The development of the test was overseen by a Regional Tribunal Judge. The JAC Advisory Group, composed of senior judiciary and representatives of the legal profession, supervised the development of the test. As is the practice of the JAC, both the test and the marking schedule were subject to an extensive quality and equality assurance process. Its fitness was assessed by means of two dry runs with a range of volunteers, one of whom was a District Tribunal Judge within the jurisdiction; all the other volunteers had no prior experience of this jurisdiction. The dry runs assisted in the elimination of any ambiguities within the text itself. There were no complaints from the 20 participating volunteers that there was any inherent unfairness in the test. The volunteers generally found that the timescale was such that a concentrated expeditious approach was required to complete all of the questions; considering the nature of the appointment and the qualities and abilities sought to be examined, the JAC were satisfied that the timescale was appropriate.

Structure of the Test

The test consisted of two parts, Part A and Part B. Part A was a multiple choice test based principally on the tribunal rules applicable to this jurisdiction and on generic judicial skills. The link to the rules was provided in advance and candidates could be sent hard copies on request. In addition, candidates could bring their own copy of the rules to the test to assist in answering questions. The questions however, did not require access to any other legislation in order to provide an informed answer.

Part A

Part A consisted of nine scenarios, each relating to either a different tribunal rule or judicial skill. Candidates were provided with either four or five options from which to choose. The best option scored five points and to add subtlety to the test, other marks, which were reasonable answers but less than optimal, attracted points fewer than five. In all of the questions there was at least one answer which attracted no points. From a highest possible score of 45, marks ranged between 42 and 9 demonstrating that this part of the test was sufficiently challenging to assess the qualities and abilities to be assessed.

Part B

Part B consisted of three scenario questions, each addressing a different piece of legislation. As with the procedural rules, the legislation was available to the candidate in advance and they could bring their copies with them to assist them in answering questions. The legislation used for this part of the test amounted in total to 20 pages.

- **Question 1** concerned an application for a Social Fund funeral payment and attracted a total of 45 marks. The marks scored by the candidates ranged from 26 to zero. Even among candidates who scored well, there was a general failure to address all of the parties mentioned within the scenario, notwithstanding that this was explicitly requested in the question. Those candidates who scored very poorly did not grasp the relevance of the question, nor were they able to apply the relevant legislation; they merely discussed the claimant's position in general terms without addressing the relevance of the other parties mentioned upon her claim for benefit.
- **Question 2** was a scenario concerning an overpayment decision. The relevant legislation was Section 71 of the Social Security Administration Act 1992. It attracted 30 marks. The scenario narrated an award of Disability Living Allowance and a subsequent supersession decision increasing the rate of the award. There was then a decision removing entitlement from the date of the original award. The range of scores was 27 to zero. Those who scored well clearly identified the error in the decision making process and the appropriate steps which a tribunal should take in the light of same. Those who scored poorly either failed to identify the error or classed it simply as a slip which the tribunal could cure. In addition, many candidates erroneously applied Rule 2 of the Procedural Rules to cure the defect in the adjudication process. Candidates who scored well, over 20 points, answered this question in a succinct and focussed fashion.
- **Question 3.** This scenario concerned an application to extend the time for claiming benefit; the relevant legislation being Regulation 19 of the Social Security (Claims and Payments) Regulations 1987. This question attracted 30 marks. Marks ranged from 18 to zero. Those marking the test formed the view that for the majority of candidates, this was the last question attempted and as such time was very much at a premium. This is reflected in the general low scoring for this question. With few exceptions, the candidates failed to grasp the proper application of Regulation 19 to the scenario. There was a failure to relate the various dates set out within the scenario to the legislation. The scenario was designed in such a way that candidates were expected to identify distinct periods and then to make a judgement on whether or not the legislation permitted extension of the time to such periods. The scoring indicated that, in general terms, candidates failed to answer the questions with such a structured approach. The consequence being that their answers were mostly a mere reiteration of the legislation provided to them without a proper application to the terms of the scenario. All this was reflected in the relatively poor scoring for this question.

Marking Schedule and Moderation

All scripts were identified by number and test centre only. In addition, markers avoided marking papers from candidates within their own region. Staff of the JAC marked Part A. All were double marked and quality assured. A team of five salaried Tribunal Judges marked Part B of the scripts. Two of the markers had set the test and the marking schedule.

At the outset of the marking, the five markers all marked four scripts which had been copied and circulated in order that comparison could be made on the marks obtained. There was in fact, very little divergence in opinions, and what there was was discussed and a consensus quickly arose to ensure marking consistency. The papers were all marked according to a very detailed marking schedule which proved to be consistent in identifying relevant issues which candidates were expected to include. At the outset it was agreed that, no marks would be deducted for irrelevant or clearly wrong answers, that candidates should be given the benefit of the doubt where applicable and that no marks would be deducted on the grounds of illegibility.

Each script was subject to marking by a second marker. Any variation was then discussed. More than one third of the scripts were also moderated by a third marker. Such an approach ensured a very high degree of consistency in the marking – commonly no more than one or two marks. At final moderation, a large percentage of papers at either side of the cut off line were then reconsidered. This final moderation re-emphasised the consistency of the marking process.

Distribution of Marks

It was clear that the candidates' scores in the multiple choice questions were manifestly higher than those achieved in the scenario questions. Such higher scoring was to be expected. Having regard to the quality and experience of the candidates, when given various options, they will have the knowledge and confidence to select the optimal or, at least, an appropriate answer. Many candidates will have had a familiarity with the scenarios. In addition, it is likely that most candidates attempted Part A first, perhaps devoting too much time albeit in securing a good mark. Part B was clearly the more challenging part of the test. It was clear that many candidates who scored poorly did not have sufficient time to answer all the questions. In addition, many candidates in this portion exhibited poor exam technique: a reiteration of provided legislation rather than an application of that legislation to the questions posed, a failure to understand and properly address the questions and a lack of understanding of the proper application of the law.

General Comments on Candidate Performance

In order to assess the effectiveness of any test it is necessary to consider the extent to which it was successful in assessing the relevant competencies. Approximately 50% of the candidates elected to use a typed format for the answers. No real problems were encountered by handwritten scripts, as indicated above; no points were deducted for illegibility. Answers which candidates had struck out were wholly disregarded. No marks were deducted for poor spelling, grammar or syntax. It is considered that the test was effective in distinguishing those who were able to work at speed and under the pressure of a test environment to produce very credible answers and those who struggled with such basic aspects as the ability to understand the question correctly or identify the relevant legal test to be applied, notwithstanding that all statutory material had been provided in advance. The provision of such material borne out by scores achieved in the dry run ensured the candidate without prior knowledge in this field of law could perform well in the test.

Conclusion

Those who developed the test expected the scoring to be relatively high in the multiple choice section. Part B was designed therefore, to be more exacting, albeit that the scenarios addressed legislation which was neither arcane nor inappropriately complex.